ADVISORY COMMITTEE ON MORTGAGE FRAUD

FINAL REPORT

NOVEMBER 14, 2005

EXECUTIVE SUMMARY

The Government of Alberta established the Advisory Committee on Mortgage Fraud in the spring of 2005. The Committee was asked to review the report of the Minister of Government Services Expert Panel and formulate recommendations to address the growing incidence of mortgage fraud in Alberta. The Committee was comprised of representatives from both the public and private sectors.

During the review, it was recognized that a significant amount of progress had been made since the Expert Panel's report, including the establishment of the Mortgage Fraud Prevention Task Group and the development of education and training programs and "best practices" by various industry members. It was important to the members to understand the impact of mortgage fraud on Albertans, not only from a financial perspective but also from a societal cost, especially for those who have been negatively affected.

The Committee focused its discussions and deliberations on the following strategies:

1. Enforce liabilities and subsequent remedies to deter abuse and fraud.
2. Promote industry regulation and enforcement.
3. Execute good lending practices.
4. Develop, adopt, and communicate best practices in the various industry sectors.
5. Share information, determine the problem, and inform the industry.
6. Develop consumer awareness programs.
7. Understand Privacy Acts in order to share information and suggest reform.
8. Amend the *Law of Property Act* to identify who can sue on the covenant.
9. Amend the *Land Titles Act* and associated Regulations and standardize the practices and policies of the Land Titles Office.

Based on its discussions, the Advisory Committee on Mortgage Fraud makes the following recommendations:

1. That the Government of Alberta formally recognize, endorse and

actively participate in the Mortgage Fraud Prevention Task Group (MFPTG) that has been established over the past year to encourage active communication between all of the parties involved in the business of mortgage financing. The Committee agreed this is the appropriate mechanism for the industry to develop best practices for the industry to combat the growing incidence of mortgage fraud in Alberta. It was also agreed that best practices be communicated to employees in the various organizations as part of their in-house training. The Committee further recommends that the stakeholder group be expanded to include representation from the law enforcement community.

2. That the Government of Alberta publicly declare the issue of mortgage fraud to be a significant concern for all Albertans and a priority for the Government, and support the establishment of a provincially funded integrated investigation unit and a prosecution unit by providing funding to the Solicitor General and Ministry of Public Security and Alberta Justice and Attorney General. The Committee further recommends that significant efforts be made by the Government to publicize when charges dealing with mortgage fraud are laid and again when a prosecution is successful. It is the understanding of the Committee that the intent of the investigative unit would be to investigate all mortgage frauds in Alberta and that the operational and tactical processes between police agencies and the prosecutors requires further discussion, coordination and agreement before implementation.

3. That the Government of Alberta request that the members of the Mortgage Fraud Protection Task Group work together to attempt to quantify the monetary significance of mortgage fraud in Alberta. Such statistics would be most helpful if they quantified actual losses as well as exposure. They would also be useful if they separated fraud-for-profit and fraud-for-housing. Comments on the societal impact of mortgage fraud on Albertans would also be helpful.

4. That the Government of Alberta, together with the Real Estate Council of Alberta, amend the *Real Estate Act* to ensure the Council has the appropriate investigative powers to carry out its regulatory mandate and allow for an enhanced ability for sharing personal information about mortgage fraud perpetrators, while still respecting the privacy rights of individuals.

5. That the Government of Alberta conduct a thorough review of all pertinent privacy legislation (*Personal Information Protection Act, Personal Information Protection and Electronic Documents Act* and *Freedom of Information and Protection of Privacy Act*) with the intent of suggesting amendments that would enhance the ability for sharing personal

information as it relates to mortgage fraud, with due regard for the privacy rights of individuals.

6. That the Government of Alberta (through Alberta Government Services) work cooperatively with the industry in developing communication tools to make Albertans aware of mortgage fraud and to ensure that people are aware of the criminal nature of this activity. Areas of concentration should include:
    - making straw buyers aware of the repercussions of their activities,
    - profiling special investigations or prosecutions during Fraud Awareness Month, and
    - preparing articles for the print media.
7. That the Government of Alberta consider possible amendments to the *Law of Property Act* as a means of reducing mortgage fraud. Specifically, section 40 should be reviewed in terms of allowing lenders to sue on the covenant except for *bona fide* farm land and owner occupied residential property. The Exception should take into account property used as a residence or farm by the individual owner or a member of the owner's immediate family.

8. That the Government of Alberta review the practicality of having the Land Titles Office send notices to lenders/property owners when there is a suspected incidence of mortgage fraud or fraudulent transfer of title. In addition, the Land Titles Office should review ways to tighten up the change of address process to reduce the risk of false changes of address being used for the purpose of committing fraud. The Committee further recommends that the Government consider possible amendments to the *Land Titles Act* that would address the issue of mortgage fraud by providing:
    - the right of the Registrar to refuse to register a suspicious document without risk of liability to the Assurance Fund;
    - the right of the Registrar to collect personal information in order to determine the identity of persons submitting documents, where necessary; and
    - the creation of a statutory, thirty-day unpaid vendor's lien that would run from the registration of a transfer.

INTRODUCTION

At a meeting in October 2004, attended by a number of stakeholders involved in the residential mortgage loan industry, the Ministers of Government Services, Justice and Attorney General, and Solicitor General and Public Security agreed that an advisory committee be established to review the issue of mortgage fraud in Alberta. They agreed to involve a number of stakeholders in the committee,

which was requested to bring forward recommendations on how to begin to alleviate the problem of mortgage fraud in Alberta.

The terms of reference for the Committee were as follows:

1. Using the notes from the Minister of Government Services Expert Panel, review the strategies dealing with mortgage fraud and develop an action plan/recommendations addressing the responsibilities of all parties (both public and private sector) to present to the Ministers on what needs to be done in order to alleviate this issue in Alberta.

2. Prepare recommendations on legislative changes that may need to be implemented to address mortgage fraud.

3. Prepare recommendations on policy or procedural changes that are required to address this issue. These recommendations will deal with the responsibilities of the private sector in amending their policies/procedures to put them in a more proactive position to begin to address some of the mortgage fraud issues.

4. Prepare recommendations on communications materials that may be needed to better inform all stakeholders on the issue of mortgage fraud.

5. Address privacy concerns dealing with the sharing of information between interested and affected parties dealing with mortgage fraud.

The membership of the Advisory Committee included:

Tom Thackeray – Chair	Alberta Government Services
Bill Meade	Alberta Solicitor General and Public Security
Bill Pinckney	Alberta Justice and Attorney General
Jean-Paul Sharpe	Alberta Justice and Attorney General
Rob Phillips	Alberta Government Services
Kelly Hillier	Alberta Government Services
James Flett	Alberta Finance
Adrian Marr	Edmonton Police Service
Paul Griffin	Canadian Bankers Association
Bob Myroniuk	Real Estate Council of Alberta
Graham Wetter	Credit Union Central
Stuart McKellar	ATB Financial
Tim Turner	RCMP
Steve Raby	Law Society of Alberta

The Committee commenced its deliberations in March 2005 and held meetings in March, April, June and August. Alberta Government Services provided administrative support.

BACKGROUND INFORMATION

The Law of Property Expert Panel

The Law of Property Expert Panel (the Expert Panel) was established in 2003 by the Minister of Government Services to discuss two issues:

1. How to level the mortgage default insurance playing field in Alberta.
2. How to address mortgage fraud.

The first several meetings of the Expert Panel focused on the mortgage default insurance issue, which was addressed by legislative amendments in 2004. The final meetings began the discussions on how to address mortgage fraud in Alberta. The Panel concluded in early 2004 with 9 recommendations.

Mortgage fraud is a complex crime. Occasionally only buyers are involved, but often organized crime groups and a possible range of professionals may be involved. The Real Estate Council of Alberta (RECA) reports that, in Alberta, professionals, such as lawyers, real estate brokers, mortgage brokers, lenders and real estate appraisers, assist (sometimes unwittingly) buyers and organized crime groups to perpetrate mortgage fraud.

Mortgage fraud typically occurs in one of the following three ways:

1. Fraud-for-housing – professionals cut corners to qualify homebuyers who usually intend to reside in the home and repay the loan.
2. Fraud-for-profit or illegal activities – sophisticated schemes involving criminals and the unwitting public to artificially inflate house prices until they can obtain a mortgage in excess of the amount paid for the house, then default on the mortgage and keep the difference; it may also involve criminal organizations intent on laundering the illegal proceeds of crime (e.g. grow houses, "meth" labs).
3. Stealing the title or identity of the homeowner and selling their house and pocketing the proceeds.

Mortgage fraud is becoming more sophisticated as technology allows perpetrators to more easily falsify documents and even create identities. RECA estimates that there were about $275 million in fraudulent mortgage loans in Alberta in the 2001-02 fiscal year, based on transactions investigated.

The Expert Panel developed nine strategies, which were viewed as being a good first step in addressing the issues surrounding mortgage fraud. These strategies were:

Strategies that can be addressed by industry stakeholders:

1. Enforce liabilities and subsequent remedies to deter abuse and fraud.
2. Promote industry regulation and enforcement.
3. Execute good lending practices.
4. Develop, adopt and communicate best practices in the various industry sectors.
5. Share information, determine the problem and inform the industry.
6. Develop consumer awareness programs.
7. Understand Privacy Acts in order to share information and suggest reform.

Strategies that require Government intervention:

8. Amend the *Law of Property Act* to identify who can sue on the covenant.
9. Amend the *Land Titles Act* and associated Regulations, and standardize the practices and policies of the Land Titles Office.

Advisory Committee on Mortgage Fraud

At the initial meeting of the Committee, it was agreed to group certain of the strategies that had close linkages. It was also agreed that small groups of Committee members would be established for each group of strategies, with a lead identified to facilitate discussion within the group and to report back to the Committee on proposed approaches to include in the recommendations to Government. The Committee also benefited from the work that is being done by the newly formed Mortgage Fraud Prevention Task Group that has been meeting over the past year to discuss the issue of mortgage fraud and to work together to find common solutions that can be used by all participants. This group primarily is an industry-group that was initiated by the Real Estate Council of Alberta.

The grouped strategies with the identified leads were:

- Strategy 1 and 2 (Real Estate Council of Alberta)
- Strategy 3 and 4 (Canadian Bankers Association)
- Strategy 5 and 7 (Alberta Government Services)
- Strategy 6 (Alberta Government Services)
- Strategy 8 (ATB Financial)
- Strategy 9 (Alberta Government Services)

The Committee also invited the Alberta Law Reform Institute to provide a presentation on Title Insurance. The Alberta Mortgage Brokers Association also made a presentation on their mortgage fraud educational material that is available to members. RECA provided mortgage fraud training materials in the form of a computer disk.

DISCUSSION

Shortly after the Advisory Committee began discussing the issue of mortgage fraud, it became apparent that a significant amount of work had been done by the private sector carrying forward from the Expert Panel Report and as a result of a significant mortgage fraud lawsuit. This fact came as somewhat of a surprise to the public sector members on the Committee and gave credence to the seriousness of the issue.

This section of the report will deal with the discussion and debate that took place with regard to each of the individual or grouped strategies identified by the Expert Panel. The report will present the salient points raised by Committee members, state the conclusions that were reached and present the appropriate recommendations that the Committee agrees need to be presented to the Government.

Like the Expert Panel, the Committee focused on fraud-for-profit. One of the challenges, identified early in the deliberations, was quantifying the monetary impact of mortgage fraud, not only on financial institutions and insurers but also on the general public. While the Canadian Bankers Association indicated that the impact on their members was less than 0.7% of the total book value of mortgage business, the Committee agreed that the impact was as much a societal issue as a monetary one.

Enforce liabilities and subsequent remedies to deter abuse and fraud and to promote industry regulation and enforcement (Strategies 1 and 2).

The Committee learned early on in the process that the private-sector stakeholders involved in the mortgage lending industry had done a significant amount of work. The Mortgage Fraud Prevention Task Group had commenced meetings in early 2005 with a view of creating industry awareness of the issue of mortgage fraud and bringing forward to government an update on steps members had taken towards being in a better position to work cooperatively to mitigate the impact of fraud on their industry. The Real Estate Council of Alberta and several financial institutions established this group to enhance communications among stakeholders and develop strategies to reduce mortgage fraud.

Some of the areas where work has begun include:

- Identifying and developing professional standards for industry members
    - This includes the requirement by RECA that all real estate and mortgage broker industry members complete the Mortgage Fraud Awareness course by September 30, 2005 to be eligible for licensing.
    - The Alberta Real Estate Association took a lead role in developing and delivering the current mandatory six-hour professional development course for all industry members on Risk Reduction and Mortgage Fraud Awareness.
    - The Alberta Mortgage Brokers Association has always supported professionalism in the industry through its code of ethics. Members are also required to adhere to the standards of conduct for industry members established by RECA under the *Real Estate Act*.
    - The Canadian Institute of Mortgage Brokers and Lenders (CIMBL) has developed a best practices document relating to origination standards for fraud avoidance that has been provided to all parties involved in mortgages for their review and adoption.
    - Appraisers in Alberta come under the jurisdiction of RECA for licensing and regulation of this sector of the industry in October 2004. The Appraisal Institute of Canada (AIC) is involved in the upgrading of required education for AIC members, as well as other provincial licensees.
- Identifying and developing professional standards for lenders
    - The vast majority of the lending institutes across Alberta provide training for staff on how to identify "red flags".
    - Staff are also provided with training courses focused on mortgage fraud as a major issue, which give the attendees the information, education and tools required to mitigate risk.
    - The Canadian Bankers Association (CBA) was a key player in the organization of CIMBL, whose mandate includes dealing with mortgage fraud. CBA members vigorously pursue all instances of fraud and are constantly investing in new processes and technology to keep fraud to a minimum.
    - The Canadian Mortgage and Housing Corporation (CMHC) has over the past year been rolling out a national broker and lender-training program. CHMC also maintains a record of all suspected fraud that is discovered by it or reported to it by lenders or third parties.
- Clearly setting out consequences/penalties for breach of legislation

- RECA has dedicated investigators and resources to combat mortgage fraud and has developed strategies to accelerate the gathering of information, confront the industry member and involve the broker.
- Licensees involved in mortgage fraud have been subject to large fines, licence suspensions and licence cancellations.

- Increasing the awareness and priority of investigations of breaches of the law and enforce penalties for mortgage fraud
  - RECA notifies law enforcement agencies of cases where RECA industry members are involved in mortgage fraud.
  - Financial institutions work very closely with law enforcement agencies across the country and with other organizations involved in real estate transactions to share information about how mortgage fraud happens and take steps, both individually and collectively, to stay ahead of the criminals.
  - CMHC has a good relationship with law enforcement agencies and refers cases to the police whenever possible.
- Increased liaison between stakeholders in order to identify trends and scams on a monthly basis
  - RECA investigators meet on a regular basis with financial institution security representatives and law enforcement officials to discuss mortgage fraud and related issues.
  - The Mortgage Fraud Prevention Task Group has met three times in 2005 and includes representatives from industry and professional regulators.
  - CMHC is working with the Law Society of Upper Canada (acting on behalf of all provincial law societies) to improve communication between lawyers and lenders.
  - Members of the CBA and credit unions in Alberta share amongst themselves (as permitted by law) fraud-related information in an effort to close the gap, where possible, on an industry basis.
  - The Real Estate Data Exchange enables subscribers to perform background checks on real estate professionals or firms, periodic reviews of real estate or mortgage professionals with whom they do business, and quality control investigations on loans containing inconsistent information.
- Encouraging publicity for prosecutions of mortgage fraud cases in order to deter copycats
  - In conjunction with Alberta Government Services, RECA has created a tip sheet to alert the public to ways in which they might inadvertently be drawn into mortgage fraud schemes. The publication discusses the

role of straw buyers, property flipping, the low down on down payments, and other red flags indicating possible mortgage fraud.

- RECA advises the media of licence suspensions, licence cancellations and lifetime bans of industry members and posts all news releases on their web site.
- Financial institutions have published tip sheets and warnings for consumers.

The Committee came to the following conclusions, based on their discussions and research. First, the Mortgage Fraud Prevention Task Group should be encouraged to continue its work, and organizations that have not provided or developed initiatives to assist in addressing the problems associated with mortgage fraud should be encouraged to do so. Second, there is a significant need for the Province to establish a dedicated unit to investigate and prosecute those involved in mortgage fraud. The Committee believes that publication of successful prosecutions will be a deterrent for those considering involvement in the future.

Recommendation 1: That the Government of Alberta formally recognize, endorse and actively participate in the Mortgage Fraud Prevention Task Group (MFPTG) that has been established over the past year to encourage active communication between all of the parties involved in the business of mortgage financing. The Committee agreed this is the appropriate mechanism for the industry to develop best practices to combat the growing incidence of mortgage fraud in Alberta. It was also agreed that best practices be communicated to employees in the various organizations as part of their in-house training. The Committee further recommends that the stakeholder group be expanded to include representation from the law enforcement community.

Recommendation 2: That the Government of Alberta publicly declare the issue of mortgage fraud to be a significant concern for all Albertans and a priority for the Government. It is also recommended that the Government support the establishment of a provincially funded integrated investigation unit and a prosecution unit by providing funding to the Solicitor General and Ministry of Public Security and Alberta Justice and Attorney General. The Committee further recommends that significant efforts be made by the Government to publicize when

charges dealing with mortgage fraud are laid and again when a prosecution is successful.

It is the understanding of the Committee that the intent of the investigative unit would be to investigate all mortgage frauds in Alberta and that the operational and tactical processes between law enforcement agencies and the prosecutors requires further discussion, coordination and agreement before implementation.

Execute good lending practices and develop, adopt and communicate best practices in the various industry sectors (Strategies 3 and 4).

It was reported to the Committee that there are good examples of best practices in the various industry sectors. These include the CIMBL policy referred to earlier, the RECA educational programs and programs within financial institutions. The appraisal industry is also working on establishing best practices for its members.

In addition, provincially-regulated financial institutions (ATB Financial and Credit Union Central) have reviewed their own policies and benchmarked them against other industry best practices. Industry members expressed a desire to develop a general framework for a "best practices" standard for mortgage fraud.

Quantifying mortgage fraud is difficult for lenders because loss resulting from mortgage fraud is recorded as part of a lender's general residential mortgage loan portfolio loss, and not as a separate entry. It is often not until later that some of the files can be identified as mortgage fraud files. More efforts are being made to quantify mortgage fraud loss on an industry level rather than at an individual financial institution level.

With respect to the status of the CIMBL policy among lending institutions, the majority of the financial parties support it or are reviewing it further with an intention to support at a later date. Financial institutions are ensuring that there are contractual arrangements in place with mortgage brokers. RECA advised that the CIMBL policy is a recommended document for mortgage broker members and its adoption is being reviewed by the Alberta Mortgage Broker Association.

The Committee concluded that various players have adopted, or are looking at adopting, best practices in an attempt to minimize the impact of mortgage fraud on their operations. Lenders are also working independently within their own institutions to ensure that staff are educated in identifying mortgage fraud activities. There is also a cross-pollination of ideas between lenders. Industry members that RECA is responsible for are being educated, with plans to add

appraisers to the program in the fall of 2005. Finally, the Law Society of Alberta should be encouraged to develop materials for its members so that the members are aware of their responsibilities.

While the Committee looked at due diligence generally, there are many different aspects to this subject – identification, equity verification, employment and income verification, property verification, purchase agreement verification, and appraisals. A review of all of these issues is complex and is not suitable for committee work. If the Government is interested in a thorough and detailed review and assessment of due diligence, an expert should be retained to conduct a review and assessment. There could be obstacles to the work of the expert, including: (1) lenders do not track specific numbers on mortgage losses due to fraud, and (2) lenders may be unwilling or unable to share their due diligence procedures for security or proprietary reasons.

Notwithstanding the progress being made by the industry to improve communication and sharing of best practices, the Committee believes that the quantification of mortgage fraud would assist in better understanding of the impact on Albertans. The quantification should include not only the financial impact on lenders but also investigate other costs including, but not limited to, insurance company losses, investigation costs incurred by law enforcement agencies, reimbursement from Land Titles, legal costs and losses borne by consumers.

Recommendation 3: That the Government of Alberta request that Mortgage Fraud Prevention Task Group work together with a "trusted third party" to quantify the monetary significance of mortgage fraud in Alberta. Such statistics would be most helpful if they quantified actual losses, as well as exposure and looked at all costs associated with fraud. They would also be useful if they separated fraud-for-profit and fraud- for-housing. Comments on the societal impact of mortgage fraud on Albertans would also be helpful.

Share information, determine the problem, inform the industry and understand privacy legislation in order to share information and suggest reform (Strategies 5 and 7).

The Committee generally agreed that part of the problem with mortgage fraud in Alberta and across the country is the general lack of information sharing amongst the industry, the law enforcement community and the Government. The recent effort by RECA in establishing the Mortgage Fraud Prevention Task Group (MFPTG) is an excellent first step. This is a forum where information can be shared, standards and best practices can be reviewed and adopted, and general debate on issues can take place.

It is difficult to determine the extent of the problem of mortgage fraud in Alberta. The matter was raised at a meeting of the MFPTG that generated significant discussion. Based on information from the Canadian Bankers Association, the monetary issue is not as significant as the societal nature of the problem. There was an interest in attempting to quantify the value of losses to the financial industry due to mortgage fraud. One suggestion was to have financial institutions and other lenders and the insurance industry report on an annual basis to a "trusted third party" who would amalgamate the data in a non-identifying form and report to interested parties. Another suggestion was to require mandatory reporting, although support for this was cautious.

Communication amongst all of the stakeholders is another issue that needs to be better managed. A mechanism needs to be developed that would give all stakeholders a ready source of the latest information dealing with mortgage fraud and suspected fraudsters. This could be accomplished by developing a web site hosted by a partner (for example, RECA) that would publish the latest information and add links to other sites that would allow for better dissemination of information on the subject. The web site would form a natural extension to the MFPTG.

One of the challenges affecting the sharing of information about mortgage fraud is the existing legislation that governs the protection of personal information and confidential business information. There are at least four statutes that are interrelated in the area of information sharing. They include:

- *Personal Information Protection Act* (PIPA)
- *Personal Information Protection and Electronic Documents Act* (PIPEDA)
- *Freedom of Information and Protection of Privacy Act* (FOIP Act)
- *Real Estate Act* (REA)
- *Privacy Act* (Canada)

These need to be reviewed, together with the common law duty of confidentiality. The issue is how these Acts work together to allow for the sharing of information between organizations that may be subject to different privacy laws. Federally-regulated private sector organizations are subject to PIPEDA while those regulated by the Province are subject to PIPA. "Public bodies" in Alberta are subject to the FOIP Act. The REA is the governing legislation for RECA. RECA is subject to PIPA, not the FOIP Act. Federal "public bodies" including the RCMP and Canada Mortgage and Housing Corporation are subject to the *Privacy Act*. There are legal issues with all of the Acts that have to be reviewed in order to accomplish the desire of different players in the mortgage business being able to share information without breaching an individual's privacy rights.

PIPA is Alberta legislation that governs the collection, use and disclosure of personal information by the provincially-regulated private sector. The Act is

based on the principle of consent in most cases. It does, however, allow for the collection, use and disclosure of personal information without consent in certain circumstances.

PIPEDA is the federal Act that governs the collection, use and disclosure of personal information by federally-regulated organizations or provincially-regulated organizations in provinces other than Alberta, British Columbia and Quebec. The Act is based on the CSA Privacy Model Code and is also consent-driven.

The FOIP Act is also Alberta legislation and is similar to public sector access and privacy laws across the country. The Act governs the collection, use and disclosure of personal information by public sector bodies, but is not based on consent.

Alberta's *Real Estate Act* sets up the Real Estate Council of Alberta and provides RECA with its authority and powers. The Council has responsibility for the actions of realtors, mortgage brokers and appraisers, but does not have authority with respect to other fraudsters. The Act does not give RECA law enforcement responsibilities, nor does it specifically refer to fraud prevention activities.

The *Privacy Act* governs how federal organizations handle personal information. There are strict conditions dealing with how these institutions can disclose personal information without the consent of the individual. This restricts how these organizations can share personal information with organizations such as RECA.

PIPEDA permits an "investigative body" to collect and disclose, without consent, personal information for purposes related to investigating a breach of an agreement or contravention of a provincial or federal law. PIPA permits an organization that is recognized by legislation as carrying out fraud prevention, detection or suppression activities to collect and disclose personal information without consent for those purposes. RECA has made application to Industry Canada to be listed as an investigative body under PIPEDA. The Bank Crime Prevention and Investigation Office of the CBA already has this designation. There are limited circumstances, based on the current facts and legislation, that allow for the complete sharing of information between all parties. There needs to be clear guidelines developed so that all parties involved in the mortgage industry understand what information sharing is permitted by law between various organizations and how the various statutes work together.

The Committee has recently learned that the Uniform Law Conference is undertaking, as one of its ongoing projects, a review of the need for common legislation for mortgage discharges and mortgage fraud. The Committee believes that this would be an excellent opportunity to address the issue of mortgage

fraud at a national level and would support the ULC in moving this project forward as quickly as possible.

As both PIPEDA and PIPA are scheduled for review within the next year, the Committee concluded that submissions should be considered for both of these processes to allow for the ability to share a limited amount of personal information between organizations for the purposes of preventing and detecting mortgage fraud.

Recommendation 4: That the Government of Alberta, in consultation with the Real Estate Council of Alberta, amend the *Real Estate Act* to ensure the Council has the appropriate investigative powers to carry out its regulatory mandate and to allow for an enhanced ability for sharing personal information about mortgage fraud perpetrators, while still respecting the privacy rights of individuals.

Recommendation 5: That the Government of Alberta conduct a thorough review of all pertinent privacy legislation (*Personal Information Protection Act*, *Personal Information Protection and Electronic Documents Act*, *Freedom of Information and Protection of Privacy Act*, and *Privacy Act*) with the intent of suggesting amendments that would enhance the ability for sharing personal information as it relates to mortgage fraud, with due regard for the privacy rights of individuals. Guidance also needs to be developed to allow all parties to understand their limitations in sharing personal information.

Develop consumer awareness programs (Strategy 6).

One of the strategies outlined by the Expert Panel was to develop consumer awareness programs to assist in identifying the circumstances when mortgage fraud may have an impact on consumers. Both Alberta Government Services and RECA have developed materials on mortgage fraud. These materials are readily available on the web sites of both organizations.

Based on research conducted by Alberta Government Services, educational materials are largely targeted at professionals involved in mortgage transactions (realtors, lenders and lawyers), although most organizations involved in mortgage lending make some sort of print or Internet information available to consumers. Examples of professional awareness programs include:

- training courses for police services, lawyers, mortgage brokers, appraisers, realtors, banking industry

- web site information, including "red flags"
- testimonial videos of professionals who have knowingly or unknowingly been part of mortgage fraud
- "Mystery Mortgage Shopper", who provides feedback to employers
- conferences and workshops

Consumer awareness approaches are generally passive in nature; information is on a web site or in a pamphlet/brochure/fact sheet for anyone who chooses to look for it.

There is a distinction between education and awareness programs. Education involves participation by the individual with an increase in knowledge and skill of the participant. Awareness is an increased level of recognition or heightened awareness of a particular topic. Most public campaigns are awareness campaigns.

The objective of a program or campaign is either to reduce or stop mortgage fraud through prevention or to reduce or stop mortgage fraud through reporting. Any consumer awareness program would benefit from a common symbol or visual identity for the campaign. For example, the state of Georgia uses a stop sign while RECA uses red flags.

The Committee reviewed various examples of consumer awareness programs.

- The Mortgage Bankers Association of America instituted a national program, which was Internet-based. The campaign provides three tools consumers can use to help themselves.
- The National Association of Mortgage Brokers, in a cooperative effort with the FBI, established an Internet campaign to encourage consumers to report mortgage fraud.
- The Georgia Real Estate Fraud Prevention and Awareness Coalition developed an education program which included:
    - a "best practices" booklet for the real estate industry
    - a brochure "stopping fraud before it starts" for the industry
    - a set of do's and don'ts index cards for consumers
- The Canadian Institute of Mortgage Brokers and Lenders has identified a number of issues, including the need for the development of nationwide industry standards for education and best practices through an accreditation program. CIMBL suggests one approach to increasing awareness would be establishing a reporting mechanism on the costs, impact, victims, and types of fraud and then reporting this information to the public.
- The Real Estate Council of Alberta has developed a tip sheet in cooperation with Alberta Government Services. RECA also provides public notices to the

media of license suspensions, cancellations and lifetime bans from the industry.

The Committee came to the conclusion that any awareness program has to be supported by all stakeholders. The Committee also believes that a key element to reducing mortgage fraud is to ensure significant publicity when perpetrators are charged and convicted of fraud.

Recommendation 6: That the Government of Alberta (through Alberta Government Services) work cooperatively with the industry in developing communication tools to make Albertans aware of mortgage fraud and to ensure that people are aware of the criminal nature of this activity. Areas of concentration should include:

- making straw buyers aware of the repercussions of their activities,
- profiling special investigations or prosecutions during Fraud Awareness Month, and
- preparing articles for the print media.

Amend the *Law of Property Act* to identify who can sue on the covenant (Strategy 8).

The discussion of the Committee on the *Law of Property Act* (LPA) focused on the view that the current legislation does not adequately protect mortgage lenders against inappropriate mortgages, artificially escalated property values or property flippers. Financial institutions have suffered a series of losses as a result of mortgage fraud and where the market has been manipulated. There are currently a number of lawsuits and foreclosures where, at the end of the process, lenders will be left with considerable losses.

It was recognized that the intent of the LPA is to protect homeowners and farmers from insolvency by prohibiting such individuals from being sued on the personal covenant to pay on a mortgage if there is a deficiency in the amount recovered by a mortgage lender after foreclosure (section 40). However, the existing LPA is overly broad in that it does not distinguish between protecting individuals who purchase property for their own residential use or farm use from those making such purchases as investments. As the LPA is currently worded, it provides protection to individuals who purchase property or farm land as investment properties. It was suggested that deficiency judgment protection should be extended only to those individuals who mortgage residential land for their residence or farmland to carry on farming activities.

The view was also expressed that the current protection is open to abuse and is being manipulated for economic gain. Ultimately, these abuses cause mortgage losses that translate into higher purchase costs and more stringent requirements on bona fide mortgage consumers. The financial community strongly believes it is in the interest of consumers, as well as to the benefit of mortgage lenders, that the Government of Alberta amend the LPA to address this problem while maintaining protection for *bona fide* individual homeowners and farmers and their immediate families.

The Committee supports the amendment of the LPA so that both individual mortgagors and individual transferees are protected from being sued for any deficiency when the property mortgaged is used by that individual or a family member as their principal residence or as a farm. It is the view of the Committee that such an amendment will continue to support the objective of protecting individual homeowners and farmers from consequences of insolvency, while having the effect of eliminating protection for mortgagors who acquire property for investment or commercial purposes. For the same reasons, the Committee supports the amendment of the LPA to remove any protection for an investor or corporate entity from being sued for any deficiency. It was observed that the lending community does not believe it was ever the intention of the Province of Alberta that the LPA be used to protect investors or fraudsters from potential liability resulting from a deficiency. The Committee also discussed amending the LPA to include a provision to the effect that if any mortgage was obtained through fraud, misrepresentation, or bad faith on the part of the mortgagor, the lender may sue for any deficiency, notwithstanding the use of the property or any subsequent transfer of the property.

In reviewing the LPA, the Committee looked at how the other western provinces treat this issue. In brief, British Columbia, Manitoba and Ontario each permit a lender to sue on the personal covenant contained within a mortgage when there is a deficiency. Only Saskatchewan has protection similar to what currently exists in Alberta. The proposed amendment to the LPA would still provide Albertans who reside in their homes and farmers with greater protections than those afforded in British Columbia, Manitoba and Ontario. The amendment would provide greater protection than Saskatchewan's legislation in most cases.

The Committee realizes that this change will require careful legislative drafting relating to numerous issues, including change in use, transfers and the definition of family member. The Committee believes these issues are best left to a consultation during the legislative drafting process.

In conclusion, the Committee is of the view that the current deficiency judgment protection is an unnecessarily broad method of protecting homeowners and farmers. The ability to sue on the covenant acts as a strong deterrent to fraud, and limiting the protections under the LPA to *bona fide* residential and farm use by an owner or immediate family member would achieve an appropriate balance.

Recommendation 7: That the Government of Alberta consider possible amendments to the *Law of Property Act* as a means of reducing mortgage fraud. Specifically, section 40 should be reviewed in terms of allowing lenders to sue on the covenant except for bona fide farm land and owner-occupied residential property. The exception should take into account property used as a residence or farm by the individual owner or a member of the owner's immediate family.

Amend the *Land Titles Act* and associated regulations and standardize the practices and policies of the Land Titles Office (Strategy 9).

Land registration in Alberta is based on the Torrens system. The Government has custody of all original titles and documents and has the legal responsibility for the validity and security of all registered land title information. The Government guarantees the accuracy of title. As a result, anyone who suffers a loss due to an error on title or because of a fraudulent transaction may be able to obtain compensation from the Government through the operation of the Assurance Fund.

The Fund faces a challenge from the increased incidence of mortgage fraud. Since 1989, Land Titles has had 13 cases of mortgage fraud totaling $1 million. Increased fraud could significantly increase the liability.

Land Titles is affected primarily by fraud-for-profit activities such as:

- the so-called Oklahoma flip – the simultaneous purchase and resale of property with the intent to artificially increase values of land;
- the fraudulent transfer of title that is then mortgaged, frequently involving impersonation and identity theft; and
- the use of "straw buyers" - phony loan applicants who use their good credit to obtain a mortgage, then transfer title and have the new non-qualifying loan applicant assume the mortgage. Frequently, the persons assuming the mortgage are unaware that the mortgage value has been inflated in the process.

The Committee discussed a number of suggestions to address the role of Land Titles in the mortgage fraud process, including:

- Notification to lenders when either title ownership changes or a mortgage is registered. Notification would give lenders the opportunity to investigate and determine whether or not a non-qualifying buyer has assumed the mortgage. Land Titles' computer system is not able to produce automatic notices and a manual process would add 1-2 minutes per registration package to the average 8-minute examination time. This would result in an increase of 10-

20% in processing time for a normal registration and would have a similar negative impact on registration turnaround times. The Canadian Bankers Association has stated that its members are not able to efficiently manage manual notices. Land Titles will investigate the possibility of producing automatic notices during the redevelopment of its computer system.

- The Registrar be given the right to refuse to register an instrument, without any risk of liability to the Assurance Fund, when the Registrar suspects fraud or improper dealings have occurred, or are occurring. The *Land Titles Act* now requires the Registrar to register any instrument that meets the qualifications for registration. This may increase the cost/timing of mortgage deals and possibly legal challenges as to the appropriateness of the exemption from liability and/or the Registrar's use of that power.

- The Registrar be given the power to investigate suspicious documents and request further information, including the right to collect information to confirm the identity of individuals. In connection with this, it was suggested that registration submissions to Land Titles be required to be conducted through a Land Titles account holder or by being personally delivered to a Land Titles front counter so that there are opportunities for confirmation of identities, by either the account holder or the Land Titles counter.

- That Land Titles stop its practice of commissioning documents at its front counter. This practice is seen as providing a means for fraudsters to involve Land Titles in the completion of their fraud. This would make it more difficult for fraudsters by forcing them to obtain commissioning services elsewhere.

- That there be added to the *Land Titles Act* a thirty-day unpaid vendor's lien provision which would run from the registration of a transfer. If the vendor was not paid, the vendor would have 30 days to begin a court action to have the title returned to his or her name. Currently, when a fraudulent transfer is registered, the property is instantly clean of encumbrances and transferable by the fraudster.

- That the *Land Titles Act* be amended to provide that the Assurance Fund protects only those lenders dealing with the true owner. This would require purchasers to ensure that they are dealing with the person named on the certificate of title. This "deferred indefeasibility" system is in place in British Columbia and Ontario.

While the Committee discussed these issues, there was no clear consensus on how to implement the possible changes. The Committee believes more consultation is required between the Land Titles Office and other stakeholders to develop a "go forward" plan to address these potential changes in more detail. This consultation could take place during the review of possible amendments to the *Land Titles Act*.

Recommendation 8: That the Government of Alberta review the practicality of having the Land Titles Office send notices to lenders/property owners when there is a suspected incidence of mortgage fraud or fraudulent transfer of title. In addition, the Land Titles Office should review ways to tighten up the change of address process to reduce the risk of false changes of address being used for the purpose of committing fraud.

The Committee further recommends that the Government consider possible amendments to the *Land Titles Act* that would address the issue of mortgage fraud by providing:

- The right of the Registrar to refuse to register a suspicious document without risk of liability to the Assurance Fund;
- The right of the Registrar to collect personal information in order to determine the identity of persons submitting documents, where necessary; and
- The creation of a statutory, thirty day unpaid vendor's lien that would run from the registration of a transfer.

CONCLUSION

The members of the Mortgage Fraud Advisory Committee appreciate the foresight of the Government of Alberta in establishing the Committee. The Committee recognizes that significant work has been done by both the public and private sectors since the initial report from the Minister of Government Services' Expert Panel and firmly believes that with the acceptance and implementation of the recommendations, the issue of mortgage fraud in Alberta will be addressed in a positive and proactive manner. All stakeholders must work together to minimize the impact mortgage fraud has on our citizens and the mortgage financial industry.